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Remarks.

Reconsideration of the application as amended is respectfully requested.

No claim presently stands allowed. Claims 1-4 and 7-10 were previously canceled. Claims 12-14 were previously added. Claims 5, 6, and 11 have now been canceled.

Response to Advisory Action

The Examiner indicates that "claim(s) 12-14 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s)" 5, 6, and 11. Accordingly, such cancellation has been effected herein, as stated above.

Response to Telephonic Advisory

In a follow-up telephone message to Applicant's counsel of Wednesday, November 09, 2005, Examiner Henderson stated that:

Examiner Carter, who formerly was examining this case, has left the art unit;

he had not been aware of Applicant's prior Pat. No. 6,786,515; and

it appears that a double patenting rejection had erroneously not been maintained in light of the '515 patent.

In response, Applicant respectfully traverses this proposed rejection and asserts that a double patenting characterization would not be proper. The claims of the '515 patent are drawn to "a tube

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container with an integral panel for carrying a label" comprising, *inter alia*, a label panel "integrally formed from material forming the tube container". However, the instant claims 12-14 are drawn to "an extended text label for a capped tube container" in which the label is secured to the container either directly (claim 13) or via a separate tongue (claims 12 and 14).

Applicant asserts that claims 12-14 of the instant application are patentably distinct over those of the '515 patent, since, *inter alia*, the '515 patent only teaches and claims a panel formed integrally from the tube material itself; this is a significant and distinct variation of physical structure relative to that of the instant invention, as evidenced by the claims of the respective cases.

Applicant has therefore not submitted a terminal disclaimer in this Amendment, and respectfully requests that the Examiner's proposed rejection in this regard not be rendered.

Conclusion

This Amendment is presented in accordance with revised 37 C.F.R. §1.121, effective 7-30-2003.

Claims 1-4 and 7-10 were previously canceled. Claims 12-14 were previously added. Claims 5, 6, and 11 have now been canceled,

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and Applicant continues to assert a right to present them in a continuing application.

For the reasons stated above, Applicant believes that his invention disclosed and claimed in the instant application is patentable. Therefore, with the cancellation herein of claims 5, 6, and 11, allowance of claims 12-14 appears to be in order and such action is accordingly requested.

Also transmitted herewith is a PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a) to respond to the Office Action, along with a Credit Card Payment Form for payment of the extension of time fee.

The Applicant and his counsel would appreciate any further inquiry from the Examiner, if deemed necessary after consideration of this Amendment, by way of a telephone conversation with counsel so that a timely Notice of Allowance may be issued.

Respectfully submitted,
Joseph D. Franko, Sr.

Dated:

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